

DENNIS A. BARLOW, STATE BAR NO. 63849  
dbarlow@ci.burbank.ca.us  
JULI C. SCOTT, STATE BAR NO. 79653  
jscott@ci.burbank.ca.us  
CAROL A. HUMISTON, STATE BAR NO. 115592  
chumiston@ci.burbank.ca.us  
275 E. Olive Avenue  
Burbank, CA 91502  
TEL: (818)238-5702/FAX: (818) 238-5724  
Attorney for Defendants CITY OF BURBANK,  
BURBANK POLICE DEPARTMENT,  
BURBANK POLICE OFFICERS ADAM  
BAUMGARTEN AND MICHAEL EDWARDS

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

PRESTON SMITH, an individual;

Plaintiff,

v.

CITY OF BURBANK, et al.

Defendant.

) Case No. CV10-8840 VBF (AGRx)  
)  
) **STATEMENT OF**  
) **UNCONTROVERTED FACTS AND**  
) **CONCLUSIONS OF LAW IN**  
) **SUPPORT OF MOTION FOR**  
) **SUMMARY JUDGMENT, OR IN**  
) **THE ALTERNATIVE, SUMMARY**  
) **ADJUDICATION OF ISSUES BY**  
) **THE CITY OF BURBANK,**  
) **BURBANK POLICE**  
) **DEPARTMENT, OFFICER ADAM**  
) **BAUMGARTEN, AND OFFICER**  
) **MICHAEL EDWARDS**  
)  
) **DATE: MAY 16, 2011**  
) **TIME: 1:30 P.M.**  
) **CTRM: 9**  
)

**STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF  
LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES BY THE  
CITY OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER  
ADAM BAUMGARTEN, AND OFFICER MICHAEL EDWARDS**

1 TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND  
2 THEIR ATTORNEYS OF RECORD:

3 The City of Burbank, Burbank Police Department, and Burbank Police  
4 Officers Adam Baumgarten and Michael Edwards hereby submit their  
5 Statement of Uncontroverted Facts and Conclusions of Law:

6 **UNCONTROVERTED FACTS**

- 7 1. On April 10, 2009, Plaintiff was arrested for a violation of Health and Safety  
8 Code § 11550(a). (Exhibit 1.)
- 9 2. During the course of affecting that arrest, plaintiff fled from Officer  
10 Gunn. (Exhibit 1.)
- 11 3. According to plaintiff, Officer Gunn used a taser on plaintiff six  
12 times. (Comp., ¶17-18.)
- 13 4. After plaintiff was tasered, plaintiff could hear officers shouting to Officer  
14 Gunn, "Why can't we here you on your radio?" (Comp.; ¶ 18.)
- 15 5. At that point, plaintiff started yelling, "He's killing me. He's killing  
16 me." (Comp., ¶ 18.)
- 17 6. According to the complaint, Officer Baumgarten "upon arriving at the  
18 scene" shouted at plaintiff to, "turn on your stomach and shut the fuck up."  
19 (Comp., ¶ 18 .)
- 20 7. Then according the plaintiff, Officers Baumgarten and Edwards used  
21 force to ultimately affect plaintiff's arrest. (Comp., ¶ 18.)
- 22 8. There is no allegation of excessive force used following Plaintiffs arrest.
- 23 9. on April 14, 2009, a four-count misdemeanor complaint was filed against  
24 Plaintiff in the Los Angeles Superior Court. (Exhibit 1.)
- 25 10. Count III of the misdemeanor complaint alleged that plaintiff "did willfully  
26 and unlawfully use, or be under the influence of a controlled substance, to

27 **STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF**  
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**ADAM BAUMGARTEN, AND OFFICER MICHAEL EDWARDS**

1 wit: Cocaine—a violation of California Health & Safety code §11550(a).  
2 (Exhibit 1.)

3 11. Count II of the complaint alleged that Plaintiff "did willfully and unlawfully  
4 resist, delay or obstruct a public officer discharging or attempting to  
5 discharge any duty of his office or employment" – a violation of California  
6 Penal Code § 148(a)(1). (Exhibit 1.)

7 12. The criminal complaint specifically alleged that Plaintiff committed the  
8 following acts of resistance: Plaintiff ran from Officer Gunn during a lawful  
9 detention and despite orders to stop. (Exhibit 1.)

10 13. The criminal complaint specifically alleged that Plaintiff committed the  
11 following acts of resistance: Plaintiff used elbows and hands in a fist to  
12 strike Officer Baumgarten, Officer Edwards, Officer Joel, Officer  
13 Rodriguez, and Officer Gunn during the officers' attempt to lawfully  
restrain Plaintiff (Exhibit 1.)

14 14. The criminal complaint specifically alleged that Plaintiff committed the  
15 following acts of resistance: Plaintiff flailed arms and kicked legs  
16 when Officer Baumgarten, Officer Edwards, Officer Joel, Officer  
17 Rodriguez, and Officer Gunn tried to detain him. (Exhibit 1.)

18 15. On April 29, 2009, Plaintiff plead guilty to violating Count II of the  
19 complaint – California Penal Code § 148(a)(1), and Count III—California  
20 Health and Safety Code § 11550(a). (Exhibits 2 and 3.)

21 16. Plaintiff signed a four-page document entitled "Misdemeanor Advisement of  
22 Rights, Waiver, and Plea Form," which freely acknowledges the guilty  
23 plea. (Exhibit 2.)

24 17. Plaintiff's plea was approved by the Court. (Exhibits 2 and 3.)

25 18. In open court on April 29, 2009, in the presence of his criminal defense

1 counsel, Plaintiff admitted he understood the charges against him, and pled  
2 guilty. (Exhibit 3.)

3 **CONCLUSIONS OF LAW**

- 4 1. Plaintiffs Section 1983 claim against Officer Baumgarten, and therefore,  
5 also the City of Burbank and Burbank Police Department, is barred because  
6 Plaintiff plead guilty to violating California Penal Code § 148(a)(1) and a  
7 judgment in Plaintiffs favor would necessarily invalidate his conviction.  
8 *Heck v. Humphrey*, 512 U.S. 477, 144 S. Ct. 2364, 129 L. Ed. 2d 383  
9 (1994).  
10 2. Plaintiffs Section 1983 claim against Officer Edwards, and therefore, also  
11 the City of Burbank and Burbank Police Department, is barred because  
12 Plaintiff plead guilty to violating California Penal Code § 148(a)(1) and a  
13 judgment in Plaintiffs favor would necessarily invalidate his conviction.  
14 *Heck v. Humphrey*, 512 U.S. 477, 144 S. Ct. 2364, 129 L. Ed. 2d 383  
15 (1994).  
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3. Plaintiffs state law claims against Officers Baumgarten and Edwards, the City of Burbank, and the Burbank Police Department, are barred because of his conviction for violating California Penal Code § 148(a)(1). *Yount v. City of Sacramento*, 43 Cal.4th 885, 902 (2008).

DATED: April 18, 2011

Respectfully submitted,

DENNIS A. BARLOW

City Attorney

By: 

CAROL A. HUMISTON

Sr. Assistant City Attorney

Attorney for Defendants CITY OF  
BURBANK BURBANK POLICE  
DEPARTMENT, BURBANK  
POLICE OFFICERS ADAM  
BAUMGARTEN AND MICHAEL  
EDWARDS